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amongst other things, the Court regards it as immoral or opposed to public policy. If the object of an agreement is immoral or opposed to public policy, clearly the agreement cannot be enforced. It cannot be denied that knowingly letting a house to a prostitute with the object of her carrying on therein prostitution is immoral and contrary to public policy, and a landlord who knowingly so lets quarters to a prostitute to carry on prostitution cannot recover the rent in a Court of law. This is the answer which we give to the reference.

REVISIONAL CIVIL.

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December 5.

Before Mr. Justice Aikman, and Mr. Justice Karamat Husain.

IN THE MATTER OF THE PETITION OF KEDAR NATH.*

Act No. XVIII of 1879 (*Legal Practitioners Act*), *section* 36—*Order declaring certain persons to be touts*—*Revision*—*Jurisdiction*—*Practice*—*Statute* 24 *and* 25 *Vict., Cap. CIV, section* 15—*Rules of High Court of the* 18*th January*, 1898, *rules* 1 (xiii) and 4.

The District Judge of Meerut held an inquiry under section 36 of the Legal Practitioners Act, 1879, as the result of which he ordered certain persons to be proclaimed to be touts and excluded from the precincts of the courts in the judicial division. The parties affected applied to the High Court against the Judge's order under section 15 of Statute 24 and 25 Vict., Cap. CIV. On this application being laid before a division Bench for disposal it was *held* :—

Per KARAMAT HUSAIN, J., that the disciplinary powers of the High Court under section 15 of the Statute being exerciseable only by the full Court, a bench of two Judges had no jurisdiction to adjudicate upon the application neither had a single Judge jurisdiction to admit it.

Per AIKMAN, J., that the Court had an inherent power to delegate to one or more of its members the power to deal with applications such as the present, and rule 1 (xiii) of the Rules of Court of the 18th January 1898 effected such a delegation. But the powers of the Court under section 15 of the Statute were limited, and in this instance no case for their exercise had been shown. *Tej Ram* v. *Har Sukh* (1) and *Muhammad Suleman Khan* v. *Fatima* (2) referred to.

IN this case the District Judge of Meerut had taken proceedings under section 36 of the Legal Practitioners' Act against certain persons alleged to be touts, and by an order dated the 15th

* Civil Revision No. 50 of 1908, from an order of L. Stuart, Esq., District Judge, Meerut, dated the 15th of June 1908.

(1) (1875) I. L. R., 1 All., 101. (2) (1886) I. L. R., 9 All., 104.

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June 1908 had directed that a list should be prepared of the names of eleven persons who were found to be touts and hung up in his own Court and in all Courts subordinate to his, including the rent courts. Against this order Kedar Nath, one of the persons affected thereby, applied to the High Court under section 15 of the Charter Act.

Mr. *E. A. Howard*, (with whom Mr. *R. K. Sorabji* and Babu *Parbati Charan Chatterji*) for the applicant, argued that the procedure of the District Judge was defective in that the evidence against the alleged touts was taken behind their backs. It was not sufficient that the evidence was shown to the persons affected thereby: they should have been allowed to cross-examine the witnesses against them.

It was also argued that under the Charter Act the powers given by section 15 were exercisable only by the whole Court and not by a bench of two Judges, and the cases of *In the matter of Kuar Bahadur* (1) and *Lal Singh* v. *Ghansham Singh* (2) were referred to as to the practice of the Court.

It was further contended that at any rate the order could have no application to Revenue Courts, which were not subordinate to the District Judge.

The Government Advocate (Mr. *W. Wallach*), in support of the Judge's order pointed out that the Judge's procedure had been in accordance with that adopted by the High Court in the case of *Kuar Bahadur* (1). He had acted in a regular manner and made an exhaustive enquiry and the applicant had been given an opportunity to cross-examine the witnesses.

As to the question of the jurisdiction of the Bench, that he submitted, was covered by the rules of Court, rules 1 (xiii) and 4 of which gave power to a Division Bench to hear cases of the nature of the present. If, however, it was necessary that the powers given by section 15 of the Charter Act must be exercised by the whole Court, then the application was not yet before the Court at all, a single Judge having no power to admit it.

As to whether the District Judge's order could apply to Rent Courts, it was argued that in several matters the Collector was subordinate to the District Judge, though in others he was

(1) Weekly Notes, 1896, p. 107. (2) Weekly Notes, 1897, p. 179.

not; but the language of section 36 of the Legal Practitioners' Act was wide enough to include the Rent Courts. In any case the Collector and District Magistrate were the same, and it made no practical difference whether the applicant was excluded from a particular place as the District Magistrate's Court or as the Collector's.

KARAMAT HUSAIN, J.—The learned District Judge of Meerut acting under section 36 of the Legal Practitioners' Act, (Act No. XVIII of 1879) by his order, dated the 15th June 1908, framed a list containing the names of 11 persons who by the evidence of general repute were proved to his satisfaction to habitually act as touts, and directed it to be hung in his own Court and in all Courts subordinate to him, including the rent Courts. The appellant Kedar Nath is one of the persons whose name is on that list. He has applied for the revision of that order of the learned District Judge. There is no appeal from such an order, nor is there any revision, either under section 439 of the Code of Criminal Procedure or section 622 of the Code of Civil Procedure. The only section under which the High Court has been held entitled to interfere with an order passed under section 36 of the Legal Practitioners' Act is section 15 of the High Courts Act, 24 and 25 Vict., Cap. 104. In the application for revision there is no ground to the effect that section 15 of the High Courts Act gives the power of superintendence to the whole Court, and not to a Bench of two Judges, and that therefore this Bench has no jurisdiction to dispose of this revision, but, as the ground deals with the jurisdiction of the Court and is of great importance, we allowed the learned counsel for the applicant to argue it. He contends that section 15 of the said Act gives the High Court power to "call for returns," to make general rules for regulating the practice and proceedings of the Courts subject to its appellate jurisdiction, and to prescribe forms for every proceeding in the said Courts, and no one can contend that a Bench of two judges of this Court has power to do any of the above acts, and that as the power of superintendence is also given by the same section a Bench of two Judges has no power to exercise it. If it has such a power the result will be that the whole Court will be bound by the Act of two

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Judges only. The learned Government Advocate in answer to this contention says that Rule 4 of the Rules of the High Court, which is as follows:—"Save as prescribed by law or by these rules or by special order of the Chief Justice every other case shall be heard and disposed of by a Bench of two Judges," gives this Bench a power to dispose of the application for revision, which undoubtedly is a case, and for which there is no provision in the rules of the High Court. He also argues that there has been a course of decisions in this Court as well as in other courts in which the cases under section 36 of the Legal Practitioners' Act have been dealt with by a Bench of two Judges and not by the High Court as a whole, and that the objection as to the jurisdiction of a Bench of two Judges to deal with the matter has never been taken. See I. L. R., 1 All., 101; I. L. R., 9 All., 104; I. L. R., 21 All., 181; Miscellaneous No. 39 of 1901, decided on the 6th June 1901; Miscellaneous No. 127 of 1904, decided on the 22nd February 1905, and the cases under section 36 of the Legal Practitioners' Act in the other High Courts quoted on p. 1040, under section 15 of the High Courts Act, in the Code of Civil Procedure by O'Kinealy, 6th edition.

In my opinion the contention of the learned counsel for the applicant is well founded. The power of superintendence conferred upon the High Court by section 15 of the High Courts Act, which power has been extended to interference with the orders passed under section 36 of the Legal Practitioners' Act, is no doubt conferred upon the whole of the High Court and not upon a Bench of two Judges. Rule 4 of the High Court Rules, owing to the saving clause, "save as provided by law," does not empower a Bench of two Judges to dispose of the Revision, inasmuch as that power under section 15 of the High Courts Act vests in the whole Court.

There exists, no doubt, a course of decisions in which the case under section 36 of the Legal Practitioners' Act have been disposed of by a Bench of two Judges, but in none of these cases was the question of jurisdiction raised, and in the absence of any decision on that point the course can be no authority for the provisions that a Bench of two Judges has jurisdiction to deal with

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a case of this nature under section 15 of the High Courts Act. To infer a rule of law from the silence of the Judges is inconsistent with their function.

For these reasons I am of opinion that this Bench has no jurisdiction to dispose of the revision. It follows from what has been said that a single Judge of this Court has also no power to admit a revision from an order passed by a District Judge under section 36 of the Legal Practitioners' Act. The application for revision is not therefore properly before this Bench and the learned counsel for the applicant on his own showing has no *locus standi* to be heard. I would therefore reject the application.

AIKMAN, J.—This is an application by one Kedar Nath for the revision of an order of the learned District Judge of Meerut passed under the provisions of section 36 of the Legal Practitioners Act, 1879, whereby he directed that a list should be prepared of the names of eleven persons, one of them being the applicant Kedar Nath, who had been proved to his satisfaction to act habitually as touts, and ordered this list should be hung up in his own Court and in all Courts subordinate to him. He further ordered that the persons whose names were entered in these lists should be excluded from the precincts of these Courts.

The petitioner is represented here by learned counsel who has argued the case with much ability.

The Legal Practitioners' Act confers on this Court no right of interference by way of appeal or revision in the case of an order under section 36, nor is any right of interference conferred by the Code of Civil Procedure or the Code of Criminal Procedure. It has been held, however, that this Court can interfere with such an order under the general powers of superintendence over subordinate Courts which are conferred on High Courts by sections 15, 24 and 25 Vict., Cap. CIV, though, as will be seen from the Full Bench decisions in *Tej Ram* v. *Har Sukh* (1), and *Muhammad Suleman Khan* v. *Fatima* (2), its powers of interference under that section are very limited.

The learned counsel took objection to the competence of this Bench to hear this case. He contended in the first place with

(1) (1875) I. L. R., 1 All., 101. (2) (1886) I. L. R., 9 All., 104

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reference to Rule 2 of the Rules of Court, that the case must be heard by a Bench of at least three Judges. The case is not a charge against a legal practitioner, and I hold it is not a disciplinary case within the meaning of the rule. I would therefore overrule this contention

Mr. *Howard* next contended that with reference to the language of sections 15, 24 and 25 Vict., Cap. CIV, this case could only be dealt with by the Full Court. This is an ingenious argument. I think it must be admitted that no division Bench of the Court could *of its own authority* take upon itself to exercise the powers conferred by that section. But it appears to me that the Court has an inherent right to delegate to one or more of its members the power to deal with applications such as the present asking the Court to exercise the power of superintendence conferred by the section, and that it is not necessary that such cases should be dealt with by the Full Court. That the Court has delegated that power is clear from Rule 1 (xiii) and Rule 4. It would be in the highest degree inconvenient if every application under section 15 had to be dealt with by the whole Court. That Division Benches of the various High Courts have been in the habit of dealing with applications under section 15 is shown by numerous reported cases. I think for these reasons that Mr. *Howard's* second contention must be overruled.

Moreover, if his contention were held to be valid it would follow that the single Judge who issued the rule in this case had no power to issue it.

As stated above, the right of this Court to interfere under section 15 with the proceedings of a subordinate Court is strictly limited. It cannot interfere to correct an error of fact or even an error of law. See the cases cited above. All it can do is to direct a Court to exercise jurisdiction when it has declined to deal with a case within its jurisdiction or to abstain from taking action in matters of which it has not cognizance.

My only doubt in this case was whether the District Judge had power to make his order applicable to Rent Courts. These Courts are not subordinate to the District Judge in all branches of their work, but in certain classes of cases they are. I am not

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therefore prepared to say that the order so far as it referred to Rent Courts was entirely without jurisdiction.

In my opinion no good ground has been made out for interference and I would dismiss the application.

BY THE COURT.—The order of the Court is that the application is dismissed.

APPELLATE CIVIL.

1908
December 7.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

MUHAMMAD YAHIYA AND OTHERS (PLAINTIFFS) *v.* RASHID-UD-DIN (DEFENDANT).*

Mortgage—Joint mortgage—Satisfaction of mortgage debt by sale of part only of the mortgaged property—Suit for contribution by mortgagor whose property has been sold.

In a suit for contribution amongst co-mortgagors, even if it is a condition precedent to the institution of such a suit that the whole mortgage debt should have been satisfied by sale of mortgaged property, it is not also necessary that it should have been satisfied wholly out of the property of the plaintiff. *Ibn Husain* v. *Ram Dai* (1) and *Ibn Hasan* v. *Brijbhukan Saran* (2) referred to.

THIS was a suit for contribution arising out of the following facts. There was a mortgage executed by the plaintiffs and some of the defendants and the predecessors of others on the 20th of August 1892. A decree for sale was obtained on it on the 11th of July 1902. On the 22nd of April 1903 portions of the mortgaged property were sold by auction in execution of the decree and the whole amount of the mortgage was thereby discharged. The plaintiffs came into Court alleging that their property had contributed towards the mortgage debt a much larger amount than that for which it was proportionately liable. They therefore claimed the difference between the amount realized by the sale of their property and the amount of their proportionate liability. The Court of first instance, relying on the case of *Ibn Hasan* v. *Brijbhukan Saran* (2), dismissed the suit upon the ground that the whole of the mortgage money was not realized by sale of the plaintiff's property alone. The plaintiffs appealed to the High Court.

*First Appeal No. 155 of 1906, from a decree of Raj Nath, Subordinate Judge of Allahabad, dated the 29th of May 1906.

(1) (1889) I. L. R., 12 All., 110. (2) (1904) I. L. R., 26 All., 407.